

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees)	MD Docket No. 17-134
for Fiscal Year 2014)	
)	

To: The Secretary, Federal Communications Commission

Attn: Managing Director

COMMENTS OF CRITICAL MESSAGING ASSOCIATION

THE CRITICAL MESSAGING ASSOCIATION (CMA), by its attorney, respectfully submits its comments to the Federal Communications Commission in the captioned proceeding, in response to the Notice of Proposed Rulemaking (the “NPRM”), FCC 17-62, adopted May 22, 2017, released May 23, 2017, and published at 82 Fed. Reg. 26019 (June 6, 2017). In summary, CMA urges the Commission to eliminate entirely the CMRS Messaging fee, as suggested in ¶33 of the NPRM, due to the effective absence of regulatory activity warranting collection of the messaging fee and the alternative fee revenues derived from the critical messaging industry. CMA also urges the Commission to increase the *de minimis* exemption from regulatory fees from \$500 to \$1,000, as suggested in ¶31 of the NPRM.

As its comments in response to the NPRM, CMA respectfully states:

In this proceeding, the Commission seeks to establish the schedule of regulatory fees for FY 2017 to collect \$356,710,992, in order to offset the Congressional appropriation for the Commission. (NPRM at ¶¶1-2). Continuing the Commission’s review of the regulatory fee

framework initiated in 2008,¹ the NPRM proposes in relevant part to maintain the CMRS Messaging fee at \$0.08 per unit for FY 2017. (NPRM at Appendix A). However, the NPRM goes on to request comment on eliminating the CMRS Messaging fee category (NPRM at ¶33), although the fee presumably would not be eliminated until FY 2018 due to the statutory requirement to provide 90-day advance notice to Congress. (NPRM at ¶34). Otherwise, the Commission requests comment on increasing the *de minimis* exemption from regulatory fees from \$500 to \$1,000. (NPRM at ¶31).

CMA is the national trade association representing the interests of the critical messaging industry (historically known as the paging industry) throughout the United States. As wireless services have evolved over approximately the last two decades, the critical messaging industry has increasingly concentrated on serving the specialized, emergency alerting needs of health care providers, first and second responders, and other customers employing critical, time-sensitive messages using a point-to-point protocol that cannot be duplicated by broadband networks. CMA members include a representative cross-section of carriers operating messaging networks licensed by the Commission under Parts 22, 24 and 90 of its rules, as well as equipment suppliers and other vendors to the carrier industry. The services provided by CMA's carrier members are classified as CMRS Messaging services for purposes of the Commission's regulatory fees.

CMA strongly urges the Commission to eliminate the CMRS Messaging fee at the earliest possible time. As the NPRM itself points out, regulatory fees are supposed to be collected “to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities.”²

¹ *Assessment and Collection of Regulatory Fees for Fiscal 2008 (Further Notice of Proposed Rulemaking)*, MD Docket No. 08-65, FCC 08-182, released August 8, 2008 and published at 73 Fed. Reg. 50285 (August 26, 2008).

² NPRM at ¶2, citing 47 U.S.C. §159(a).

However, the fact is that the Commission no longer engages in any significant fee-recoverable activity with respect to the critical messaging industry. This is due to several factors, including (1) the Commission's effective deregulation of the critical messaging industry; (2) the absence of policy or rulemaking activity targeting the industry in recent years;³ (3) at most *de minimis* enforcement actions involving members of the industry; and (4) the change in the character of critical messaging subscribers from the consumer market to sophisticated corporations that negotiate detailed service contracts with service providers, and thus do not require or get user information services from the Commission. As a result, continued collection of the CMRS Messaging fee under Section 9 of the Communications Act is no longer warranted.

CMA also points out that the Commission does generate significant application fee revenues from the industry independent of the CMRS Messaging fee. These fees include, *e.g.*, revenues from applications for license assignments and transfers of control, for construction notifications and for Part 90 site-by-site new station and modification applications; as well as fees for renewal of licenses. Since the licensing process is the primary interface of the industry with the Commission, it is fair to conclude that those revenues already compensate the Commission for its limited regulation of the industry, and therefore that it is unnecessary to also impose a CMRS Messaging regulatory fee on top of the application fees.

Additionally, critical messaging service providers commonly also employ communications facilities in their networks, such as domestic satellite control stations, for which regulatory

³ The last significant policy and rulemaking activity targeting the critical messaging industry was during the 1996-1999 time frame when the Commission adopted auctioning for paging licenses. *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18; *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PR Docket No. 93-253, Notice of Proposed Rulemaking, 11 FCC Rcd 3108 (FCC 1996); First Report and Order, 11 FCC Rcd 16570 (FCC 1996); Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732 (FCC 1997), Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030 (FCC 1999) (subsequent history omitted).

fees are assessed. When carriers do so, those network facilities also generate regulatory fees independent of CMRS Messaging fees.

In short, continued collection of the CMRS Messaging fee is unwarranted based upon the underlying purposes for which regulatory fees are collected, and in the light of the Commission's collection of application fees as part of the licensing process. Accordingly, CMA respectfully requests that the CMRS Messaging fee be eliminated as soon as practicable.

Finally, CMA supports increasing the *de minimis* exemption from regulatory fees for FY 2017 from \$500 to \$1,000. All of the reasons supporting elimination of the CMRS Messaging fee altogether also support increasing the exemption; and increasing the exemption would provide the critical messaging industry a measure of relief this year, for FY 2017, without waiting for FY 2018. Therefore, as an appropriate immediate measure, CMA also requests that the *de minimis* exemption applicable to regulatory fees be increased for FY 2017 from \$500 to \$1,000.

Respectfully submitted,

CRITICAL MESSAGING ASSOCIATION

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